



State of New Jersey

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DIVISION OF LAW

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CHRISTINE TODD WHITMAN

Governor

Paul H. Zoubek

Acting Attorney General

JEFFREY J. MILLER

Assistant Attorney General

Director

April 24, 2000

RECEIVED

APR 25 2000

FCC MAIL ROOM

Honorable Magalie Roman Salas, Secretary
Federal Communications Commission
445-12th Street, S.W., TW-A325
Washington, DC 20554

Re: Petition of New Jersey Division of the Ratepayer Advocate for
Preemption of a New Jersey Board of Public Utilities

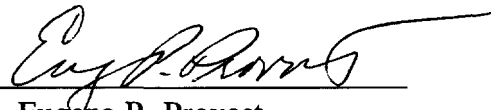
Dear Secretary Salas:

Enclosed please find an original and eight (8) copies of the Comments of the
New Jersey Board of Public Utilities in response to the above-referenced matter.

Please file-stamp one copy and return it to me in the enclosed envelope.

Very truly yours,

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY

By: 
Eugene P. Provost
Deputy Attorney General

c: Herbert H. Tate, President
Carmen J. Armenti, Commissioner
Frederick F. Butler, Commissioner
Edward D. Beslow, BPU Secretary
Barry S. Abrams, Esq.
Christopher J. White, Esq.

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JOHN J. FARMER, JR.
Attorney General
Division of Law of New Jersey
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102
Attorney for the Board of
Public Utilities

By: Eugene P. Provost
Deputy Attorney General
(973) 648-3709

RECEIVED
APR 25 2000
FCC MAIL ROOM

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

In the matter of:)	
)	
Petition of New Jersey Division of)	CC Docket No. 00-49
the Ratepayer Advocate for Preemption)	
of a New Jersey Board of Public Utilities)	AFFIDAVIT OF SERVICE
Order)	

1. I, Felicia A. Smith, of full age, being sworn according to law, upon her oath
deposes and says:

2. I am employed as a Legal Secretary in the Department of Law and Public Safety,
Division of Law.

3. On April 24, 2000, at the direction of Deputy Attorney General Eugene P. Provost,
I caused a copy of the foregoing comments of the New Jersey Board of Public Utilities in the
above-referenced matter to be sent via United Parcel Service (UPS) Next Day Air Mail, postage
prepaid, to the following:

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Ms. Janice Miles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., TW-A325
Room 5-C327
Washington, D.C. 20554

Mr. Barry S. Abrams
Vice President, General Counsel & Secretary
Legal Department
Bell Atlantic-New Jersey, Inc.
540 Broad Street, Room 2000
Newark, N.J. 07101

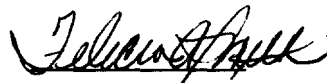
I also caused a copy of the comments to be hand delivered on April 25, 2000 to:

Christopher J. White, Esq.
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, N.J. 07101

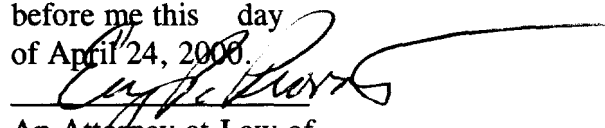
I also caused a copy of the comments to be sent by first class mail to:

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Dated: April 24, 2000


Felicia A. Smith

Sworn to and subscribed
before me this day
of April 24, 2000.


An Attorney-at-Law of
the State of New Jersey

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED
APR 25 2000
FCC MAIL ROOM

In the matter of:)
)
Petition of the New Jersey Division of)
the Ratepayer Advocate for Preemption)
of a New Jersey Board of Public Utilities)
Order)

CC Docket No. 00-49

**COMMENTS
OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES
IN OPPOSITION TO THE PETITION FOR PREEMPTION**

Pursuant to a Public Notice DA 00-677 of the Federal Communications Commission ("Commission"), the New Jersey Board of Public Utilities ("Board") herewith files these Comments in the above-referenced matter. For the reasons that follow, the Board respectfully requests that the Commission deny the petition of the New Jersey Division of the Ratepayer Advocate ("Advocate") because it does not meet the standards for preemption and because a complaint seeking the relief which the Advocate seeks herein, and in which the Advocate has been granted intervention as a full party, is presently pending before the United States District Court for the District of New Jersey.¹

Contrary to the Advocate's arguments, the within matter is clearly not appropriate for preemption of the Board under the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (hereinafter, the "Act"). First, the Board may not be preempted under Section 252(e)(5) of the Act. 47 U.S.C. §252(e)(5) provides the following:

[i]f a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within

¹ Should the Commission determine that it wishes to consider the merits of the Board's Orders challenged herein by the Advocate, the Board respectfully requests that the FCC take notice of the briefs filed before the United States District Court for the District of New Jersey and permit the Board to supplement these Comments with further arguments.

90 days after being notified (or taking notice) of such failure, and shall assume responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

The Commission has stated that it will not take an "expansive view" of what constitutes a State commission's "failure to act" under Section 252(e)(5), indicating that "failure to act" means "a [S]tate's failure to complete its duties in a timely manner."² Moreover, the Commission has limited the instances under which Commission preemption under Section 252(e)(5) is appropriate to "when a [S]tate commission fails to respond, within a reasonable time, to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C)."³ In the present matter, the Board has not failed to act, having approved numerous interconnection agreements as acknowledged by the Advocate.⁴ Thus, preemption under Section 252(e)(5) cannot lie.

The Advocate also argues that preemption is appropriate under Section 253(d) of the Act. Section 253 requires the removal of barriers to entry, and Section 253(d) provides the following:

[i]f, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

² See 47 C.F.R. §51.801; First Report and Order, I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dockets Nos. 96-98 and 95-185, FCC 96-325, ¶¶1285 (adopted August 1, 1996, released August 8, 1996) (hereinafter, "Local Competition Order"), aff'd in part and vacated in part sub nom Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), aff'd in part and vacated in part sub nom Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part and rev'd in part sub nom AT&T v. Iowa Utils. Bd., 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999); and Memorandum Opinion and Order, I/M/O Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc., CC Docket No. 99-154, FCC 99-199, released August 3, 1999 at ¶6.

³ Ibid.

⁴ See the Certification of Christopher J. White dated March 3, 2000, paragraph 20.

The Advocate argues that the Board's December 2, 1997 Order⁵ established "legal requirements" which are preventing competition in New Jersey. However, it also acknowledges that the same Order, as well as the issues it has raised in this petition, have been raised by AT&T Communications in a complaint in the United States District Court for the District of New Jersey, and are the subject of the Advocate's motion for summary judgement in that District Court docket. The Commission itself is an amicus in the matter and appeared at argument. Thus, the Commission has been on notice of the Board actions complained of herein much longer than the 90 days provided for in Section 252(e)(5). Because the matter is now pending before the District Court,⁶ what the Advocate in effect is actually seeking from the Commission, is an order preempting the United States District Court for the District of New Jersey. The Advocate has made this case before the District Court and should not be permitted to "forum shop" by seeking a hearing by the Commission of the same matter on which it seeks remedies before the Court. Moreover, the Advocate intervened in the District Court matter on January 29, 1998 and could well have filed this same petition with the Commission then or even earlier. Having waited more than two (2) years to file its claim before the Commission, the Advocate should not be permitted to burden the Commission or the parties with claims that are essentially redundant and which are already being heard in a forum of the Advocate's own choosing.

Moreover, contrary to its arguments herein, the Advocate has repeatedly recommended that the Board approve interconnection agreements which contain the very rates which the Board approved in its December 2, 1997 Order. Attached as Exhibit A are copies of recent comments filed by the Advocate with regard to two (2) Bell Atlantic-New Jersey, Inc. applications for Board approval of negotiated interconnection agreements, which are typical of the many such comments which are filed with the Board with regard to pending requests for approval of negotiated interconnection agreements. In its comments regarding Application of Bell Atlantic-New Jersey, Inc. and Affinity Network, Inc. for Approval of a Resale Agreement Under Section 252 (e) of the Telecommunications act of 1996, BPU Docket No. TM00010047, and Application of Bell Atlantic-New Jersey, Inc. and Harvard Net, Inc. for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996, BPU Docket No. TO99110879, the Advocate indicated the following:

[the Advocate] is satisfied that the Agreement does not discriminate against other carriers and is consistent with the public interest, convenience, and necessity ... [and therefore] recommends that the Board approve the Agreement. ... The Ratepayer Advocate is satisfied that the terms of the ... Agreement meet the

⁵ See the Certification of Christopher J. White dated March 3, 2000, paragraph 4, and the Board's December 2, 1997 Order attached thereto as Exhibit A.

⁶ See Advocate Petition at ¶13, fn.11.

requirements of Section 252 (e)(2) of the Telecommunications Act of 1996.

[See the Advocate's comments attached hereto as Exhibit A dated February 9, 2000 regarding Harvard Net, Inc., and dated March 29, 2000 regarding Affinity Network, Inc., at 1-2].

The Advocate issued these comments knowing that the proffered agreements contain unbundled network element and resale rates approved by the Board in its December 2, 1997 Order in BPU Dkt. No. TX95120631, the very same Order of which the Advocate seeks preemption.⁷ By its comments to the Board recommending approval, the Advocate recognizes that carriers have chosen to compete in the New Jersey telecommunications marketplace by adopting the unbundled network element and resale rates which were established by the Board in the December 2, 1997 Order which it challenges herein. Neither these rates nor the Board's Order can therefore be considered barriers to competition, and Section 253 of the Act does not serve as a basis for preemption.


WHEREFORE, for the reasons set forth above, the Board respectfully requests that the FCC deny the petition of the Division of the Ratepayer Advocate for preemption.

Respectfully submitted,

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the New Jersey
Board of Public Utilities

Dated: April 24, 2000

By:


Eugene P. Provost
Deputy Attorney General

⁷ See the Advocate's comments attached hereto as Exhibit A dated February 9, 2000 regarding Harvard Net, Inc. at 2, referring to the rates for unbundled loops approved by the Board in Docket No. TX95120631; and the Advocate's comments dated March 29, 2000 regarding Affinity Network, Inc., at 1, referring to the resale rates approved by the Board.

EXHIBIT A



State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE

31 CLINTON STREET, 11TH FLOOR

P.O. Box 46005

NEWARK NJ 07101

CHRISTINE TODD WHITMAN
Governor

BLOSSOM A. PERETZ, ESQ.
*Ratepayer Advocate
and Director*

March 29, 2000

Edward Beslow, Acting Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**Re: Application of Bell Atlantic-New Jersey, Inc. and Affinity
Network, Inc., for Approval of a Resale Agreement Under
Section 252(e) of the Telecommunications Act of 1996
BPU Docket No. TM00010047**

Dear Mr. Beslow:

The Division of the Ratepayer Advocate ("Ratepayer Advocate") has reviewed the above-captioned filing and herein submits our comments to be considered by the Board of Public Utilities ("Board"). In its petition, Bell Atlantic-New Jersey ("BA-NJ") seeks approval of its Resale Agreement ("Agreement") with Affinity Network, Inc. ("Affinity"). The Ratepayer Advocate is satisfied that the Agreement does not discriminate against other carriers and is consistent with the public interest, convenience, and necessity and therefore recommends that the Board approve the Agreement, subject to the conditions discussed below.

BA-NJ is a New Jersey corporation with offices in Newark, New Jersey. Affinity is a California corporation, with offices in Los Angeles. The Agreement sets forth the terms and conditions under which BA-NJ will offer services for resale to Affinity. Specifically, key provisions of the Agreement provide for:

- i. Access by Affinity to BA-NJ's operation support systems;
- ii. Resale of BA-NJ telecommunications services for a wholesale discount of 17.04% or 20.03% (depending upon whether Affinity provides its own operator services); and
- iii. Routing to Directory Assistance/Operator Services platforms.

The Board may reject a negotiated agreement only if it finds that the agreement discriminates

against other carriers or is not consistent with the public interest, convenience or necessity.¹ The Ratepayer Advocate is satisfied that the terms of the Agreement meet the requirements of Section 252(e)(2) of the Telecommunications Act of 1996 (the "Act"). Accordingly, the Ratepayer Advocate recommends that the Board approve the Agreement and its underlying interconnection agreement, with consideration of the following specific issues:

1. Section 271 Checklist Requirements

The Ratepayer Advocate urges the Board to make a specific finding that Board approval of the Agreement does not constitute a determination concerning BA-NJ's obligation pursuant to Section 271 of the Act.² The Ratepayer Advocate believes that any determination regarding BA-NJ's fulfillment of the requirements set forth in Section 271 of the Act must be made only following formal proceedings before the Board, which will permit a thorough review of the vital issues.

2. Subsequent Board Review of Changes or Amendments

The Ratepayer Advocate also notes that section 26.3 discusses the parties' agreement to negotiate in good faith should any legislative, regulatory, judicial, or other legal action materially affect any terms of the underlying agreement. The Ratepayer Advocate commends the Board to note in its Order that Sections 251 and 252 of the Act require the approval or rejection of the interconnection agreement. This necessarily includes any revisions or changes thereto.

The Ratepayer Advocate commends the Board to assert its continuing authority over such agreements,³ and to state specifically in its Order that any subsequent amendments or modifications to the Agreement approved therein shall be subject to review and approval of the Board. The Board has previously adopted this position.⁴

3. Streamlining of Opt-In Provisions

¹ 47 U.S.C. §252(e)(2).

² See I/M/O the Interconnection Agreement Between MFS Intelenet of New Jersey, Inc. and Bell Atlantic - New Jersey, Inc., BPU Docket Nos. TO96070527 and TO96070526 (March 10, 1997).

³ See Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997). State commissions, rather than the Federal Communications Commission ("FCC"), have continuing authority over such agreements.

⁴ See I/M/O Joint Application of Bell Atlantic-New Jersey, Inc. and Focal Communications Corporation of New Jersey for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996, BPU Docket No. TM98060367 (August 18, 1999).

Section 24.1 of the Agreement states that it is to be amended when services requested pursuant to Section 252(i) are provided. The FCC, however, has determined that the opt-in rights provided by Section 252(i) may be exercised on an expedited basis.⁵ Accordingly, a carrier may notify the local exchange carrier ("LEC") that it is exercising its rights under Section 252(i) by delivering to the LEC notice that identifies the agreement, and that provides information regarding to whom invoices and other communications should be sent.⁶ The Ratepayer Advocate recommends that the Board include in its Order the following provision:

Section 24.1 of the Agreement is not the exclusive method by which parties may exercise their rights pursuant to Section 252(i) of the Act. Parties may employ the expedited opt-in procedures adopted by the Federal Communications Commission.

4. Conclusion

The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices."⁷ The Ratepayer Advocate supports the customer benefits that will be realized through the introduction and expansion of competition in New Jersey's telecommunications market. Competition should result in lower prices, greater consumer choices, and more rapid technological innovation and deployment. It is the opinion of the Ratepayer Advocate that Board approval of the Agreement will foster the introduction of meaningful competition in the New Jersey telecommunications marketplace.

⁵ See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers: First Report and Order, CC Dockets No. 96-98, 95-185, 11 FCC Rcd. 1, at ¶ 1321 (August 8, 1996).

⁶ See I/M/O Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc., CC Docket No. 99-154, FCC 99-199 (released August 3, 1999) at ¶ 8, footnote 25; See I/M/O Global NAPs, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc., CC Docket No. 99-198, DA-99-1552 (released August 5, 1999) at ¶ 8, footnote 27.

⁷ N.J.S.A. 48:2-21.16(a)(4) and 48:2-21.16(b)(1) and (3).

Thank you for your attention to this matter. Please time/date stamp the additional copy and return it in the enclosed, self-addressed envelope.

Very truly yours,

Blossom A. Peretz, Esq.
Ratepayer Advocate

A handwritten signature in black ink, appearing to read 'J. Seidemann', written over a horizontal line.

By: Joshua H. Seidemann, Esq.
Assistant Deputy Ratepayer Advocate

cc: Service List

**Application of Bell-Atlantic New
Jersey, Inc. And Affinity Network,
Inc., For Approval of a Resale
Agreement Under Section 252(e) of
the Telecommunications Act of 1996
BPU Docket No. TM00010047**

Edward Beslow, Acting Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

President Herbert H. Tate
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Commissioner Carmen J. Armenti
New Jersey Board of Public Utilities
44 South Clinton Avenue, CN350
Trenton, NJ 08625

Commissioner Frederick F. Butler
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Two Gateway Center
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Marlo S. Oliver
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State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FLOOR
P.O. BOX 46005
NEWARK NJ 07101

CHRISTINE TODD WHITMAN
Governor

BLOSSOM A. PERETZ, ESQ.
*Ratepayer Advocate
and Director*

February 9, 2000

Edward Beslow, Acting Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**Re: Application of Bell Atlantic-New Jersey, Inc. and Harvard Net, Inc., for
Approval of an Interconnection Agreement under Section 252(e) of the
Telecommunications Act of 1996
BPU Docket No. TO99110879**

Dear Mr. Beslow:

The Division of the Ratepayer Advocate ("Ratepayer Advocate") has reviewed the above-captioned filing and herein submits our comments to be considered by the Board of Public Utilities ("Board"). In its petition, Bell Atlantic- New Jersey ("BA-NJ") seeks approval of its Interconnection Agreement ("Agreement") with Harvard Net, Inc. ("Harvard Net"). The Ratepayer Advocate is satisfied that the Agreement does not discriminate against other carriers and is consistent with the public interest, convenience, and necessity. Accordingly, the Ratepayer Advocate recommends that the Board approve the Agreement, subject to the conditions discussed below.

BA-NJ is a New Jersey corporation with offices in Newark, New Jersey. Harvard Net is a Delaware corporation with offices in Charlestown, Massachusetts. Harvard Net has exercised its right under Section 252(i) of the Telecommunications Act of 1996¹ to "opt into" the BA-NJ/Covad-

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the Act," and all citations to the sections of the Act will be to the Act as it is codified in the United States Code.

NJ Agreement, which was approved by the Board on August 18, 1999.² The Agreement sets forth the terms and conditions, and prices under which BA-NJ and Harvard Net will offer and provide network interconnection, reciprocal compensation, access to network elements, ancillary network services and wholesale telecommunications services.

The Agreement addresses a number of issues, including:

- (i) Reciprocal compensation for terminating local traffic rates of \$.001846 or \$.003738 per minute of use, depending upon where traffic is terminated on the BA-NJ and Harvard Net networks;
- (ii) Unbundled loops -- providing Harvard Net access to existing BA-NJ customers -- that incorporates rates approved by the Board in BPU Docket No. TX95120631;
- (iii) Customers to retain their telephone numbers when they switch to Harvard Net, at the rate for interim number portability established by the Board and subject to a future determination of a method for permanent number portability and cost recovery;
- (iv) Including Harvard Net's customers' primary listings in the White Pages or Yellow Pages directories for a one-time charge of \$1.00 for each listing;
- (v) The resale of BA-NJ retail telecommunications services for a wholesale discount of 17.04% or 20.03%, depending upon whether Harvard Net provides its own operator services; and
- (vi) The continued provision of 911 services to all customers.

The Board may reject a negotiated agreement only if it finds that the agreement discriminates against other carriers or is not consistent with the public interest, convenience or necessity.³ The Ratepayer Advocate is satisfied that the terms of the underlying agreement meet the requirements of Section 252(e)(2) of the Act, and notes that the Board has already approved the underlying agreement in BPU Docket No. TO98121416 (August 18, 1999). Accordingly, the Ratepayer Advocate recommends that the Board approve the Agreement upon consideration of the following

² See, *Order Approving Interconnection Agreement, I/M/O the Joint Application of Bell Atlantic-New Jersey, Inc. and Dieca Communications, Inc. d/b/a/ Covad Communications Company, for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996*, BPU Docket No. TO98101160 (Aug.18, 1999).

³ 47 U.S.C. §252(e)(2).

specific issues:

1. Section 271 Checklist Requirements

The Ratepayer Advocate urges the Board to make a specific finding that Board approval of the Agreement does not constitute a determination concerning BA-NJ's obligation pursuant to Section 271 of the Act.⁴ The Ratepayer Advocate believes that any determination regarding BA-NJ's fulfillment of the requirements set forth in Section 271 of the Act must be made only following formal proceedings before the Board, which will permit a thorough review of the vital issues.

2. Subsequent Board Review of Changes or Amendments

The Ratepayer Advocate also notes that sections 28.3 and 28.4 of the Agreement discuss the parties' agreement to negotiate in good faith should any legislative, regulatory, judicial, or other legal action materially affect any terms of the underlying agreement. Additionally, the Parties acknowledge disagreement as to whether the reciprocal compensation arrangements in this Agreement apply to Internet traffic, and reserve their rights to seek redress regarding this issue.

In the event changes are made to the Agreement in the future, the Ratepayer Advocate requests that the Board assert its continuing authority over such agreements,⁵ and state specifically in its Order Approving the Agreement that any subsequent amendments or modifications to the Agreement approved therein shall be subject to review and approval of the Board. The Board has previously adopted this position.⁶

3. Streamlining of Opt-In Provisions

Section 29.11 of the Agreement states that it is to be amended when services requested pursuant to Section 252(i) are provided. The FCC, however, has determined that the opt-in rights

⁴ See I/M/O the Interconnection Agreement Between MFS Intelenet of New Jersey, Inc. and Bell Atlantic - New Jersey, Inc., BPU Docket Nos. TO96070527 and TO96070526 (March 10, 1997).

⁵ See Iowa Utilities Board v. Federal Communications Commission, 1997 U.S. App. LEXIS 18183. State commissions, rather than the Federal Communications Commission, have continuing authority over such agreements.

⁶ See I/M/O Joint Application of Bell Atlantic-New Jersey, Inc. and Focal Communication Corporation of New Jersey, for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996, BPU Docket No. TM98060367, at 4 (August 18, 1999).

provided by Section 252(i) may be exercised on an expedited basis.⁷ Accordingly, a carrier may notify the local exchange carrier ("LEC") that it is exercising its rights under Section 252(i) by delivering to the LEC notice that identifies the agreement, and that provides information regarding to whom invoices and other communications should be sent.⁸ To ensure that there is no delay should Harvard Net choose to "opt-in" to a term or condition of an approved Agreement, the Ratepayer Advocate recommends that the Board include the following provision in its Order Approving the Agreement:

Section 29.11 of the Agreement is not the exclusive method by which parties may exercise their rights pursuant to Section 252(i) of the Act. Parties may employ the expedited opt-in procedures adopted by the Federal Communications Commission.

4. Conclusion

In conclusion, the New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices."⁹ The Ratepayer Advocate supports the customer benefits that will be realized through the introduction and expansion of competition in New Jersey's telecommunications market. Competition should result in lower prices, greater consumer choices, and more rapid technological innovation and deployment. It is the

⁷ See, *First Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd. 1, at ¶ 1321; CC Dockets No. 96-98, 95-185 (August 8, 1996).

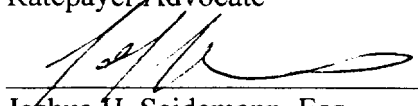
⁸ See, *I/M/O Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc.*, FCC 99-199; CC Docket No. 99-154 at ¶ 8, footnote 25 (Released August 3, 1999); See also, *I/M/O Global NAPs, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc.*, CC Docket No. 99-198; DA-99-1552 at ¶ 8, footnote 27 (Released August 5, 1999).

⁹ N.J.S.A. 48:2-21.16(a)(4) and 48:2-21.16(b)(1) and (3).

opinion of the Ratepayer Advocate that Board approval of the Agreement will foster the introduction of meaningful competition in the New Jersey telecommunications marketplace.

Very truly yours,

Blossom A. Peretz, Esq.
Ratepayer Advocate


By: Joshua H. Seidemann, Esq.
Assistant Deputy Ratepayer Advocate

cc: Service List

**Application of Bell-Atlantic New
Jersey, Inc. And Harvard Net, Inc.
For Approval of an Interconnection
Agreement Under Section 252(e) of
the Telecommunications Act of 1996
BPU Docket No. TO99110879**

Edward Beslow, Acting Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

President Herbert H. Tate
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